

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWIGHT DELTON DAVIS,

Plaintiff,

v.

PATTERSON, et al.,

Defendants.

No. 2:22-cv-01038-EFB (PC)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He alleges that state prison officials were deliberately indifferent to his medical and mental health needs in violation of the Eighth Amendment. ECF No. 1. In the complaint, plaintiff indicated that his relevant administrative appeal was “still pending.” *Id.*

On August 5, 2022, the undersigned ordered plaintiff to “show cause in writing why this action should not be dismissed for his failure to exhaust” administrative remedies prior to filing suit. ECF No. 11. In response, plaintiff filed a copy of his administrative appeal concerning an incident on May 31, 2022 and reviewed by the prison grievance office on June 1, 2022. ECF No. 12. The complaint in this action was also signed on May 31, 2022. ECF No. 1. Thus, plaintiff filed his administrative appeal on or around the day the challenged incident occurred; on the same day, he prepared the federal complaint in this action.

Because plaintiff brought suit against the defendants on June 7, 2022, he is required to have completed the inmate appeals process as to his claims by that date. *See Vaden v.*

1 *Summerhill*, 449 F.3d 1047, 1051 (9th Cir. 2006) (under 42 U.S.C. § 1997e(a), a prisoner “may  
2 initiate litigation in federal court only after the administrative process ends and leaves his  
3 grievances unredressed.”); *see also Akhtar v. Mesa*, 698 F.3d 1202, 1210 (9th Cir. 2012) (“a  
4 prisoner does not comply with [the exhaustion] requirement by exhausting available remedies  
5 during the course of the litigation.”) Unexhausted claims are subject to dismissal. Thus, this  
6 action should be dismissed without prejudice to refile after plaintiff exhausts administrative  
7 remedies for his claims.


8 Accordingly, it is hereby ORDERED that:

- 9 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied; and  
10 2. The Clerk of the Court shall randomly assign a United States District Judge to this  
11 action.

12 Further, it is hereby RECOMMENDED that this action be dismissed without prejudice to  
13 refile after plaintiff exhausts administrative remedies for his claims.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, plaintiff may file written objections  
17 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
18 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
19 time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153  
20 (9th Cir. 1991).

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22 Dated: November 28, 2022.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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